

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3227 of 2005

Between:

Kankola Madam Baswaraj, S/o.Nagardraiah,
R/o.H.No.1-52, Ramchandrapuram P.O., Medak District.

..... PETITIONER

AND

The Depot Manager, APSRTC, BHEL Depot, Medak District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the action of the respondent final order No.01/2(9)/99-BHEL, APSRTC, Dt.26-5-1999 punishment of two annual grade increments to the petitioner with future effect and the suspension period is treated as not on duty for all purpose is illegal, arbitrary and null and void and consequently direct the respondent set-aside the punishment of two years annual increments with future effect and the suspension period treated as Not on Duty.

Counsel for the Petitioner:MR.S.PRADEEP KUMAR

Counsel for the Respondents: MR.V.T.M.PRASAD

The Court at the admission stage made the following O R D E R:

The petitioner is working as a driver in respondent Corporation. He was issued a charge sheet dated 27.03.1998 for having caused an accident. The petitioner had submitted his explanation. The respondent after considering the explanation offered by the petitioner passed the final order on 26.05.1999 imposing the penalty of deferment of increment for a period of two years which shall effect the future increments duly treating the suspension period as 'Not on Duty'. The petitioner challenges the same in this writ petition on the ground that though, what was imposed is a major penalty, the respondents did not hold domestic enquiry.

Heard learned counsel for the petitioner and learned standing counsel for the respondents.

The learned counsel for the petitioner places reliance upon a judgment of Supreme Court in **KULVANT SINGH GILL v. STATE OF PUNJAB** as well as a decision of this Court in **S.K.MASTHAN v. MANAGING DIRECTOR**.

The learned standing counsel, Sri V.T.M.Prasad, on the other hand, submits that the writ petition cannot be maintained as the petitioner has filed the writ petition after a lapse of seven years and, therefore, the same deserves to be dismissed on the ground of laches.

It is true that the writ petition was filed after seven years of imposing penalty. In the normal course of things, the writ petition deserves to be dismissed on the ground of laches. However, in the matter of rights of employees, the Supreme Court in

GURUMAL SING v. PRINCIPAL, GOVERNMENT COLLEGE OF EDUCATION

has held that the belated challenge of the orders detrimental to the interests of the employees should not result in total denial of relief, and at the most they can be denied back wages. Therefore, the writ petition cannot be dismissed on the ground of laches alone.

Through the impugned order, the respondents have imposed the penalty of deferment of increment for a period of two years which shall effect the future increments duly treating the suspension period as 'Not on Duty'. No departmental enquiry was conducted. From a perusal of the Classification Control & Appeal Regulations, it is evident that the penalty of stoppage of two increments with cumulative effect cannot be treated as a minor penalty. Therefore, the same could have been imposed only after conducting enquiry. The Hon'ble Supreme Court in Kulvant Singh Gill's case (1 supra) held that major penalty cannot be imposed without conducting the departmental enquiry. In that view of the matter the impugned order cannot be sustained.

As a result of setting aside of the impugned order the matter has to be remitted to the 2nd respondent for fresh consideration. However, having regard to the fact that the order was passed in the year 1999, this Court feels it just and proper to treat the punishment against the petitioner, as the one of stoppage of annual increments for a period two years without cumulative effect. Since, the petitioner has challenged the impugned order after seven years, it is held that he shall not be entitled for any back wages or arrears of pay, as a consequence of the modification of the punishment. The petitioner shall, however, be entitled for refixation of pay with prospective effect. The disciplinary authority ordered to treat the suspension period not on duty without any reasons and, therefore, it has to be set aside. Hence it is ordered that the suspension period shall be treated as on duty.

The writ petition is accordingly disposed of with the above direction. No costs.

February 23, 2005

Note:CC in three days

bo

usd

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1. 2 CD copies.
- 2. The Depot Manager, APSRTC, BHEL Depot, Medak District.